

REMARKS

Claims 1-4, 7, 8, 10-16, 28 and 29 were examined and all stand rejected under 35 USC 103(a). Applicants have amended claims 1 and 14. Support for these amendments can be found in, for example, paragraphs [0038] through [0041] and Figures 6 and 7. As such, no new matter has been added. Claims 1-4, 7, 8, 10-16, 28 and 29 remain in the Application.

Claims Rejected Under 35 U.S.C. §103

Claims 1-4, 7, 8, 10-16, 28 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over in view of U.S. Patent No. 6,165,826 to Chau, et al. ("Chau"), in view of U.S. Patent Application Publication No. 2003/0025163 to Kwon ("Kwon"). In order to establish a prima facie case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the references when combined must teach or suggest all of the claim limitations (MPEP 2142). Based on the claims as amended, Applicants respectfully submit that a prima facie case of obviousness has not been established.

The Examiner was not persuaded by the Applicants' arguments in the Response filed August 10, 2006. The Applicants believe the intent of their claim amendments and arguments was not communicated clearly, therefore, the claims have been amended to be more specific and an explanation follows.

Claims 1 and 14, as amended, recite an etch stop layer that "covers exposed surfaces of the second device and causes tensile stress in the second device...." This finds support in the Specification at paragraphs [0038] through [0041] and in Figures 6 and 7. As will be appreciated by those of skill in the art, in order for the etch stop layer to induce a tensile stress in the second device, the etch stop layer must be a continuous layer that covers a substantial portion of the second device. In contrast, an etch stop layer that only covers a portion of

the device, for instance, an etch stop layer that covers only L-shaped insulating patterns as disclosed in Kwon, cannot induce a tensile stress.

Accordingly, the "etch stop layer" of amended claims 1 and 14 differs from the cited prior art because: 1) it is exclusive of the first device, 2) it covers the exposed surfaces of the second device, and 2) it causes a tensile stress in the second device. Chau does not touch on this subject matter, and Kwon only teaches or suggests an etch stop layer that is either "formed over an entire surface of the semiconductor substrate" or is "formed at the (sic) both sides of the second gate electrode 306(b)...." The etch stop layer of Kwon does not cover the exposed surfaces of its device and is not capable of causing a tensile stress in its device. Thus, Chau in view of Kwon does not teach or suggest all of the claim limitations of independent claims 1 and 14. Accordingly, Applicants respectfully submit independent claims 1 and 14, as well as their dependent claims 2-4, 7, 8, 10-13, 16, 28 and 29, are allowable over the cited references.

Conclusion

In view of the foregoing, it is believed that all claims now pending, namely claims 1-4, 7, 8, 10-16, 28 and 29, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (512) 732-3919.

Respectfully submitted,

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